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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/056,000

01/28/2002

James Coleman

JAMES2001

2103

7590

02/11/2005

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EXAMINER

MISKA, VIT W

ART UNIT

PAPER NUMBER

2841

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/056,000

Applicant(s)

COLEMAN, JAMES

Examiner

Vit W. Miska

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 November 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 15 is/are allowed.  
6) ☒ Claim(s) 1-8 and 16-19 is/are rejected.  
7) ☒ Claim(s) 9-14, 20 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by the U.S. Patent to Hess. The reference discloses vessel having a body 38 containing a volume of water 118, inlet 32 arranged substantially tangentially to cylindrical body 38 of the vessel as shown in Fig. 1, outlet 80, controller and timer 44-48 for controlling the rate of water inlet in comparison with the water outlet rate so as to vary the height of the volume in the vessel from a minimum to maximum over a period of one hour.

2. Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by the German patent to Sonnweber et al ('849). The reference discloses vessel with body 1, water inlet 5 arranged substantially tangentially to the body, controller 6 for controlling the rate of water inlet with respect to water outlet 7 to vary the height of the

volume of water, downstream portion 2 being of greater diameter than that of the drain port 7.

3. Claim 8 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by the German patent to Koenig ('648). The reference discloses vessel with body 3 with tangential inlet shown at A-A in Fig. 1 creating vortex 6, controller described in col. 1, lines 1-60 for controlling the rate of water inlet to vary the height of water volume, such cyclic process providing an indication of time second identical vessel is suggested in the abstract, and several such cascaded vessels are further suggested for providing visual effects.

4. Claims 9-14 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claim 15 is allowed.

### Response to Arguments

6. Applicant's comments have been given careful consideration, but have not been found persuasive. With respect to Hess, applicant argues that the patent does not disclose a "controller for controlling the rate of water inlet in comparison with the rate of water outlet so as to vary the height of the volume of water in the vessel". This feature is clearly met in Hess, with controller/timer 44-48 controlling filling of tube (vessel) 38 through water inlet 32 "raising the liquid level in the second tube 38 to the first ten minute graduation...Operation of the clock continues in this manner for the first hour of operation, until the liquid level in second timekeeping tube 38 reaches level 84". (See col. 4, lines 27-36). Thus, the "height of the volume of water in the vessel" is varied, as set forth in claim 1. Features which applicant may be reading into the claims are not found in the claimed language.

7. With regard to the limitation "the water inlet being arranged substantially tangentially to the body of the vessel", the references applied include this feature in the broadest application of the claimed terms in light of the specification and drawings. Applicant's use of the term "tangentially" in describing the location of the water inlet with respect to the vessel body has been considered in light of the specification, drawings and claims. The drawing illustrates some type of opening 6 in Fig. 1a referred to as a "tangential fill port" at page 9, line 8. The specification further states that water is pumped "tangentially into the bottom of the vessel" at page 3, line 13-14. No further

details of the arrangement of the fill port with respect to vessel body 3 can be found in the drawing or specification. Thus, the ordinary definition of the term "tangentially" is considered in determining the meaning thereof. As well known, the geometric term "tangent " refers to a line or surface "touching" at one point but not intersecting a surface. It therefore appears that this is not the specific structure which is described by applicant because water inlet 6 enters and penetrates the bottom of vessel 3 as seen in Fig. 1a. At best, a reasonable interpretation inferred from the description is that "tangentially" implies some type of arrangement where the water inlet is arranged in the vicinity of or along the vessel body. Hess discloses water inlet 32 entering vessel body 38, with the water flow directed toward the sidewalls of body 38, and thus the water inlet is arranged "substantially tangentially" with respect to the vessel body, as the term is employed by applicant. In addition, the reference may be considered to disclose the water inlet "substantially tangentially" to body 38 in the geometric sense, i.e. "substantially", but not exactly along body 38.

8. The arguments presented in connection with the remaining references in the rejection have been rebutted in the discussion of Hess, above and the rejection details.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

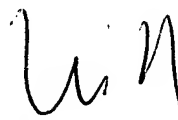
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 571-272-2108. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, K. Cuneo can be reached on 571-272-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2841

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VM  
2/3/2005



Vit Miska  
Primary Examiner